

REFERENCE TITLE: foreclosures; terms; notice.

State of Arizona  
House of Representatives  
Forty-ninth Legislature  
First Regular Session  
2009

# HB 2545

Introduced by  
Representatives Meza, Campbell CH: Fleming

## AN ACT

AMENDING SECTIONS 33-807 AND 33-808, ARIZONA REVISED STATUTES; AMENDING TITLE 33, CHAPTER 6.1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-808.01; AMENDING SECTIONS 33-809 AND 33-810, ARIZONA REVISED STATUTES; RELATING TO DEEDS OF TRUST.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 33-807, Arizona Revised Statutes, is amended to read:

33-807. Sale of trust property; power of trustee; foreclosure of trust deed

A. By virtue of his position, a power of sale is conferred upon the trustee of a trust deed under which the trust property may be sold, in the manner provided in this chapter, after a breach or default in performance of the contract or contracts, for which the trust property is conveyed as security, or a breach or default of the trust deed. At the option of the beneficiary, a trust deed may be foreclosed in the manner provided by law for the foreclosure of mortgages on real property in which event chapter 6 of this title governs the proceedings. The beneficiary or trustee shall constitute the proper and complete party plaintiff in any action to foreclose a deed of trust. The power of sale may be exercised by the trustee without express provision therefor in the trust deed.

B. The trustee or beneficiary may file and maintain an action to foreclose a deed of trust at any time before the trust property has been sold under the power of sale. A sale of trust property under the power of sale shall not be held after an action to foreclose the deed of trust has been filed unless the foreclosure action has been dismissed.

C. The trustee or beneficiary may file an action for the appointment of a receiver according to sections 12-1241 and 33-702. The right to appointment of a receiver shall be independent of and may precede the exercise of any other right or remedy.

D. **EXCEPT FOR OWNER OCCUPIED RESIDENTIAL PROPERTY**, the power of sale of trust property conferred upon the trustee shall not be exercised before the ninety-first day after the date of the recording of the notice of the sale. The sale shall not be set for a Saturday or legal holiday. The trustee may schedule more than one sale for the same date, time and place.

**E. FOR OWNER OCCUPIED RESIDENTIAL PROPERTY, THE POWER OF SALE OF TRUST PROPERTY CONFERRED ON THE TRUSTEE SHALL NOT BE EXERCISED UNTIL AFTER COMPLIANCE WITH THE CONDITIONS PRESCRIBED IN THIS CHAPTER. IF THE BENEFICIARY FAILS TO COMPLY WITH THIS CHAPTER, THE POWER OF SALE CONFERRED ON THE TRUSTEE SHALL NOT BE EXERCISED UNTIL AT LEAST ONE YEAR AFTER THE DATE THE NOTICE OF SALE IS RECORDED IF THE TRUSTOR CONTINUES TO MEET THE PAYMENT CONDITIONS PRESCRIBED IN SECTION 33-808.01.**

~~E.~~ F. The trustee need only be joined as a party in legal actions pertaining to a breach of the trustee's obligation under this chapter or under the deed of trust. Any order of the court entered against the beneficiary is binding upon the trustee with respect to any actions that the trustee is authorized to take by the trust deed or by this chapter. If the trustee is joined as a party in any other action, the trustee is entitled to be immediately dismissed and to recover costs and reasonable attorney fees from the person joining the trustee.

1           Sec. 2. Section 33-808, Arizona Revised Statutes, is amended to read:  
2           33-808. Notice of trustee's sale

3           A. The trustee shall give written notice of the time and place of sale  
4           legally describing the trust property to be sold by each of the following  
5           methods:

6           1. Recording a notice in the office of the recorder of each county  
7           where the trust property is situated.

8           2. Giving notice as provided in section 33-809 to the extent  
9           applicable.

10          3. Posting a copy of the notice of sale, at least twenty days before  
11          the date of sale in some conspicuous place on the trust property to be sold,  
12          if posting can be accomplished without a breach of the peace. If access to  
13          the trust property is denied because a common entrance to the property is  
14          restricted by a limited access gate or similar impediment, the property shall  
15          be posted by posting notice at that gate or impediment. Notice shall also be  
16          posted at one of the places provided for posting public notices at any  
17          building that serves as a location of the superior court in the county where  
18          the trust property is to be sold. Posting is deemed completed on the date  
19          the trust property is posted. The posting of notice at the superior court  
20          location is deemed a ministerial act.

21          4. Publication of the notice of sale in a newspaper of general  
22          circulation in each county in which the trust property to be sold is  
23          situated. The notice of sale shall be published at least once a week for  
24          four consecutive weeks. The last date of publication shall not be less than  
25          ten days prior to the date of sale. Publication is deemed completed on the  
26          date of the first of the four publications of the notice of sale pursuant to  
27          this paragraph. FOR OWNER OCCUPIED RESIDENTIAL TRUST PROPERTY, THE NOTICE OF  
28          SALE SHALL BE PUBLISHED IN A NEWSPAPER OF LOCAL CIRCULATION IN THE AREA OF  
29          THE COUNTY WHERE THE TRUST PROPERTY IS LOCATED.

30          B. The sale shall be held at the time and place designated in the  
31          notice of sale on a day other than a Saturday or legal holiday between 9:00  
32          a.m. and 5:00 p.m. mountain standard time at a specified place on the trust  
33          property, at a specified place at any building that serves as a location of  
34          the superior court or at a specified place at a place of business of the  
35          trustee, in any county in which part of the trust property to be sold is  
36          situated.

37          C. The notice of sale shall contain:

38          1. The date, time and place of the sale. The date, time and place  
39          shall be set pursuant to section 33-807, subsection D. The date shall be no  
40          sooner than the ninety-first day after the date that the notice of sale was  
41          recorded. FOR OWNER OCCUPIED RESIDENTIAL TRUST PROPERTY, IF THE BENEFICIARY  
42          FAILS TO NEGOTIATE IN GOOD FAITH OR OTHERWISE FAILS TO COMPLY WITH SECTION  
43          33-808.01, THE DATE OF SALE SHALL BE NO SOONER THAN ONE YEAR AFTER THE DATE  
44          THAT THE NOTICE OF SALE WAS RECORDED.

2. The street address, if any, or identifiable location as well as the legal description of the trust property.

3. The county assessor's tax parcel number for the trust property or the tax parcel number of a larger parcel of which the trust property is a part.

4. The original principal balance as shown on the deed of trust. If the amount is not shown on the deed of trust, it shall be listed as "unspecified".

5. The names and addresses, as of the date the notice of sale is recorded, of the beneficiary and the trustee, the name and address of the original trustor as stated in the deed of trust, the signature of the trustee and the basis for the trustee's qualification pursuant to section 33-803, subsection A, including an express statement of the paragraph under subsection A on which the qualification is based. The address of the beneficiary shall not be in care of the trustee.

6. The telephone number of the trustee.

7. The name of the state or federal licensing or regulatory body or controlling agency of the trustee as prescribed by section 33-803, subsection A.

8. THE NAME, ADDRESS, TELEPHONE NUMBER AND ELECTRONIC MAIL ADDRESS OF THE BENEFICIARY.

9. THE NAMES AND ADDRESSES OF HOUSING COUNSELORS WHO CAN PROVIDE ASSISTANCE TO AND ATTEND NEGOTIATIONS WITH THE BENEFICIARY OF AN OWNER OCCUPIED RESIDENTIAL TRUST PROPERTY.

10. THE STATEMENT THAT AN OWNER OCCUPIED RESIDENTIAL PROPERTY WILL NOT BE SUBJECT TO FORECLOSURE FOR AT LEAST ONE YEAR AFTER THE DATE THAT THE NOTICE IS RECORDED IF THE BENEFICIARY FAILS TO NEGOTIATE IN GOOD FAITH WITH THE TRUSTOR AND A HOUSING COUNSELOR TO RESTRUCTURE THE TERMS OF THE LOAN IN ORDER TO PREVENT FORECLOSURE.

D. The notice of sale shall be sufficient if made in substantially the following form:

Notice of Trustee's Sale

The following legally described trust property will be sold, pursuant to the power of sale under that certain trust deed recorded in docket or book \_\_\_\_\_ at page \_\_\_\_\_ records of \_\_\_\_\_ county, Arizona, at public auction to the highest bidder at (specific place of sale as permitted by law) \_\_\_\_\_, in \_\_\_\_\_ county, in or near \_\_\_\_\_, Arizona, on \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_m. of said day, **UNLESS OTHERWISE PROVIDED BY LAW:**

1 (street address, if any, or identifiable  
 2 location of trust property)  
 3 (legal description of trust property)  
 4 Tax parcel number \_\_\_\_\_  
 5 Original principal balance \$ \_\_\_\_\_  
 6 Name and address of beneficiary \_\_\_\_\_  
 7 \_\_\_\_\_  
 8 \_\_\_\_\_  
 9 Name and address of original trustor \_\_\_\_\_  
 10 \_\_\_\_\_  
 11 \_\_\_\_\_  
 12 Name, address and telephone number of trustee \_\_\_\_\_  
 13 \_\_\_\_\_  
 14 \_\_\_\_\_  
 15 Signature of trustee \_\_\_\_\_  
 16 Manner of trustee qualification \_\_\_\_\_  
 17 Name of trustee's regulator \_\_\_\_\_  
 18 Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
 19 (Acknowledgement)

20  
 21 IF THE TRUST PROPERTY IS OWNER OCCUPIED RESIDENTIAL  
 22 PROPERTY, THE NOTICE SHALL ALSO INCLUDE:

23 TELEPHONE NUMBER AND E-MAIL ADDRESS OF THE BENEFICIARY

24 \_\_\_\_\_  
 25 NAME OF THE BENEFICIARY'S LOCAL REPRESENTATIVE

26 \_\_\_\_\_  
 27 NAME, ADDRESS AND TELEPHONE NUMBER OF HOUSING COUNSELORS

28 \_\_\_\_\_  
 29 ARIZONA LAW (ARIZONA REVISED STATUTES SECTIONS 33-807,  
 30 33-808 AND 33-808.01) REQUIRES THAT THE BENEFICIARY LISTED ABOVE  
 31 WORK WITH YOU IN GOOD FAITH TO DETERMINE IF IT IS POSSIBLE TO  
 32 RENEGOTIATE THE TERMS OF YOUR LOAN TO AVOID FORECLOSURE. YOU  
 33 ARE ENTITLED TO HAVE A HOUSING COUNSELOR PRESENT AT ALL MEETINGS  
 34 WITH THE REPRESENTATIVE OF THE BENEFICIARY.

35 THERE IS NO GUARANTEE THAT TERMS OF YOUR LOAN CAN BE  
 36 MODIFIED TO AVOID FORECLOSURE. HOWEVER, THE LAW REQUIRES THAT  
 37 THE BENEFICIARY CONTACT YOU WITHIN TEN BUSINESS DAYS AFTER THE  
 38 DATE THAT THIS NOTICE OF SALE IS RECORDED AND THAT THE  
 39 BENEFICIARY SET UP A MEETING WITH YOU NO LATER THAN THIRTY DAYS  
 40 AFTER THE DATE OF THE NOTICE RECORDATION. IT IS RECOMMENDED  
 41 THAT YOU CONTACT THE BENEFICIARY'S LOCAL REPRESENTATIVE AT THE  
 42 NUMBER LISTED ABOVE, THAT YOU PROVIDE THE REPRESENTATIVE WITH A  
 43 TELEPHONE NUMBER WHERE YOU CAN BE REACHED DURING NORMAL BUSINESS  
 44 HOURS AND THAT YOU CONTACT ONE OF THE HOUSING COUNSELORS LISTED

1 ABOVE IMMEDIATELY TO SET UP AN APPOINTMENT TO REVIEW YOUR  
2 FINANCIAL ABILITY TO REMAIN IN YOUR HOME.

3 IF THE BENEFICIARY DOES NOT CONTACT AND MEET WITH YOU AND  
4 TRY IN GOOD FAITH TO RESTRUCTURE THE TERMS OF YOUR LOAN AND YOU  
5 CONTINUE TO MAKE MONTHLY PAYMENTS OF THE LESSER OF EITHER THE  
6 REQUIRED PAYMENT ON THE NOTE SECURED BY THE DEED OF TRUST OR AN  
7 AMOUNT THAT A CERTIFIED HOUSING COUNSELOR HAS DETERMINED IS  
8 APPROPRIATE TO YOUR SITUATION, YOUR HOME CANNOT BE SOLD BY THE  
9 TRUSTEE FOR ONE YEAR AFTER THE DATE THAT THE TRUSTEE'S NOTICE  
10 WAS RECORDED. IF YOU FAIL TO MAKE MONTHLY PAYMENTS DURING THE  
11 NEGOTIATIONS, THE TRUSTEE MAY PROCEED WITH THE SALE OF THE TRUST  
12 PROPERTY ON THE DATE STATED ABOVE.

13 E. Any error or omission in the information required by subsection C  
14 or D of this section, other than an error in the legal description of the  
15 trust property, ~~or~~ an error in the date, time or place of sale OR THE  
16 OMISSION OF THE NOTICE AND INFORMATION REGARDING THE MEETING TO RENEGOTIATE  
17 THE TERMS OF THE LOAN OF AN OWNER OCCUPIED RESIDENTIAL TRUST PROPERTY, shall  
18 not invalidate a trustee's sale. Any error in the legal description of the  
19 trust property shall not invalidate a trustee's sale if considered as a whole  
20 the information provided is sufficient to identify the trust property being  
21 sold. If there is an error or omission in the legal description so that the  
22 trust property cannot be identified, or if there is an error in the date,  
23 time or place of sale, the trustee shall record a cancellation of notice of  
24 sale. IF THE BENEFICIARY FAILS TO CONTACT THE TRUSTOR AND CONDUCT A MEETING  
25 AS PRESCRIBED BY SECTION 33-808.01, THE TRUSTEE SHALL RECORD A CANCELLATION  
26 OF NOTICE OF SALE. The trustee or any person furnishing information to the  
27 trustee shall not be subject to liability for any error or omission in the  
28 information required by subsection C of this section except for the wilful  
29 and intentional failure to provide such information. This subsection does  
30 not apply to claims made by an insured under any policy of title insurance.

31 F. The notice of trustee sale may not be rerecorded for any reason.  
32 This subsection does not prohibit the recording of a new or subsequent notice  
33 of sale regarding the same property.

34 Sec. 3. Title 33, chapter 6.1, article 1, Arizona Revised Statutes, is  
35 amended by adding section 33-808.01, to read:

36 33-808.01. Owner occupied properties; terms; negotiations

37 A. FOR ANY OWNER OCCUPIED RESIDENTIAL PROPERTY, THE LOCAL  
38 REPRESENTATIVE OF THE BENEFICIARY SHALL CONTACT THE TRUSTOR WITHIN TEN  
39 BUSINESS DAYS AFTER THE DATE THE NOTICE OF SALE IS RECORDED AND SHALL CONDUCT  
40 A MEETING BETWEEN THE BENEFICIARY, THE TRUSTOR AND, AT THE TRUSTOR'S OPTION,  
41 A CERTIFIED HOUSING COUNSELOR. THE FIRST MEETING BETWEEN THESE PARTIES SHALL  
42 BE SET NO LATER THAN THIRTY DAYS AFTER THE DATE OF THE RECORDATION OF THE  
43 NOTICE OF SALE, UNLESS THE TRUSTOR AGREES IN WRITING TO A LATER DATE. IN ANY  
44 EVENT, THE INITIAL MEETING SHALL NOT TAKE PLACE MORE THAN SIXTY DAYS AFTER  
45 THE DATE OF RECORDING THE NOTICE OF SALE.

B. THE PURPOSE OF THE MEETING IS TO REVIEW THE TRUSTOR'S INCOME STATUS AND TO MODIFY THE TERMS OF THE PROMISSORY NOTE OR DEED OF TRUST TO MORE FAVORABLY MEET THE TRUSTOR'S ABILITY TO PAY. THE LOCAL REPRESENTATIVE OF THE BENEFICIARY MAY RENEGOTIATE AND MODIFY THE TERMS OF THE LOAN AND THE SECURITY ON BEHALF OF THE BENEFICIARY AND SHALL NEGOTIATE IN GOOD FAITH REGARDING A MODIFICATION.

C. WITHIN THIRTY DAYS AFTER THE DATE THE NOTICE OF SALE IS RECORDED, THE TRUSTOR SHALL MAKE A PAYMENT ON THE LOAN TO THE TRUSTEE AND SHALL CONTINUE PAYMENTS WHILE NEGOTIATIONS ON THE TERMS OF THE LOAN ARE ONGOING. THE PAYMENT AMOUNT SHALL BE THE LESSER OF EITHER THE REQUIRED PAYMENT ON THE PROMISSORY NOTE THAT IS SECURED BY THE DEED OF TRUST OR AN AMOUNT DETERMINED TO BE AFFORDABLE FOR THE TRUSTOR BY A CERTIFIED HOUSING COUNSELOR. IF THE TRUSTOR FAILS TO MAKE MONTHLY PAYMENTS DURING THE NEGOTIATIONS, THE TRUSTEE MAY PROCEED WITH THE SALE OF THE TRUST PROPERTY AS ORIGINALLY NOTICED.

Sec. 4. Section 33-809, Arizona Revised Statutes, is amended to read:

33-809. Request for copies of notice of sale; mailing by trustee; disclosure of information regarding trustee sale

A. A person desiring a copy of a notice of sale under a trust deed, at any time subsequent to the recording of the trust deed and prior to the recording of a notice of sale pursuant thereto, shall record in the office of the county recorder in any county in which part of the trust property is situated a duly acknowledged request for a copy of any such notice of sale. The request shall set forth the name and address of the person or persons requesting a copy of such notice and shall identify the trust deed by setting forth the county, docket or book and page of the recording data thereof and by stating the names of the original parties to such deed, the date the deed was recorded and the legal description of the entire trust property and shall be in substantially the following form:

Request for Notice

Request is hereby made that a copy of any notice of sale under the trust deed recorded in docket or book \_\_\_\_\_ at page \_\_\_\_\_, records of \_\_\_\_\_ county, Arizona, \_\_\_\_\_, \_\_\_\_.

(legal description of trust property)

Executed by \_\_\_\_\_ as trustor, in which \_\_\_\_\_ is named as beneficiary and \_\_\_\_\_ as trustee, be mailed to \_\_\_\_\_ at \_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Signature

(Acknowledgement)

1           B. Not later than thirty days after recording the notice of sale, the  
2 trustee shall mail by certified or registered mail, with postage prepaid, a  
3 copy of the notice of sale that reflects the recording date together with any  
4 notice required to be given by subsection C of this section, addressed as  
5 follows:

6           1. To each person whose name and address are set forth in a request  
7 for notice, which has been recorded prior to the recording of the notice of  
8 sale, directed to the address designated in such request.

9           2. To each person who, at the time of recording of the notice of sale,  
10 appears on the records of the county recorder in the county in which any part  
11 of the trust property is situated to have an interest in any of the trust  
12 property. The copy of the notice sent pursuant to this paragraph shall be  
13 addressed to the person whose interest appears of record at the address set  
14 forth in the document. If no address for the person is set forth in the  
15 document, the copy of the notice may be addressed in care of the person to  
16 whom the recorded document evidencing such interest was directed to be mailed  
17 at the time of its recording or to any other address of the person known or  
18 ascertained by the trustee. If the interest that appears on the records of  
19 the county recorder is a deed of trust, a copy of the notice only needs to be  
20 mailed to the beneficiary under the deed of trust. If any person having an  
21 interest of record or the trustor, or any person who has recorded a request  
22 for notice, desires to change the address to which notice shall be mailed,  
23 the change shall be accomplished by a request as provided under this section.

24           3. FOR AN OWNER OCCUPIED RESIDENTIAL TRUST PROPERTY, TO THE  
25 INCORPORATED CITY OR TOWN, IF ANY, AND THE COUNTY IN WHICH THE PROPERTY IS  
26 LOCATED.

27           C. The trustee, within five business days after the recordation of a  
28 notice of sale, shall mail by certified or registered mail, with postage  
29 prepaid, a copy of the notice of sale to each of the persons who were parties  
30 to the trust deed except the trustee. The copy of the notice mailed to the  
31 parties need not show the recording date of the notice. The notice sent  
32 pursuant to this subsection shall be addressed to the mailing address  
33 specified in the trust deed. In addition, notice to each party shall contain  
34 a statement that a breach or nonperformance of the trust deed or the contract  
35 or contracts secured by the trust deed, or both, has occurred, and setting  
36 forth the nature of such breach or nonperformance and of the beneficiary's  
37 election to sell or cause to be sold the trust property under the trust deed  
38 and the additional notice shall be signed by the beneficiary or the  
39 beneficiary's agent. A copy of the additional notice shall also be sent with  
40 the notice provided for in subsection B, paragraph 2 of this section to all  
41 persons whose interest in the trust property is subordinate in priority to  
42 that of the deed of trust along with a written statement that the interest  
43 may be subject to being terminated by the trustee's sale. The written  
44 statement may be contained in the statement of breach or nonperformance.



1 D. No request for a copy of a notice recorded pursuant to this  
2 section, nor any statement or allegation in any request, nor any record of  
3 request, shall affect the title to the trust property or be deemed notice to  
4 any person that a person requesting a copy of notice of sale has or claims  
5 any interest in, or claim upon, the trust property.

6 E. At any time that the trust deed is subject to reinstatement  
7 pursuant to section 33-813, but not sooner than thirty days after recordation  
8 of the notice of trustee's sale, the trustee shall upon receipt of a written  
9 request, provide, if actually known to the trustee, the following information  
10 relating to the trustee's sale and the trust property:

11 1. The unpaid principal balance of the note or other obligation which  
12 is secured by the deed of trust.

13 2. The name and address of record of the owner of the trust property  
14 as of the date of recordation of the notice of trustee's sale.

15 3. A list of the liens and encumbrances upon the trust property as of  
16 the date of recordation of the notice of trustee's sale, excluding those  
17 matters set forth in section 33-438, subsection A.

18 If the trustee elects to charge a fee for providing the information  
19 requested, the fee shall not exceed five per cent of the amount the trustee  
20 may charge pursuant to section 33-813, subsection B, paragraph 4, except that  
21 the trustee shall not charge a fee that is more than one hundred dollars or  
22 be required to accept a fee that is less than thirty dollars but may accept a  
23 lesser fee at the trustee's discretion. The trustee, or any other person  
24 furnishing information pursuant to this subsection to the trustee, shall not  
25 be subject to liability for any error or omission in providing the  
26 information requested, except for the wilful and intentional failure to  
27 provide information in the trustee's actual possession.

28 F. Beginning at 9:00 a.m. and continuing until 5:00 p.m. mountain  
29 standard time on the last business day preceding the day of sale and  
30 beginning at 9:00 a.m. mountain standard time and continuing until the time  
31 of sale on the day of the sale, the trustee shall make available the actual  
32 bid or a good faith estimate of the credit bid the beneficiary is entitled to  
33 make at the sale. If the actual bid or good faith estimate is not available  
34 during the prescribed time period, the trustee shall postpone the sale until  
35 the trustee is able to comply with this subsection.

36 G. In providing information pursuant to subsections E and F of this  
37 section, the trustee, without obligation or liability for the accuracy or  
38 completeness of the information, may respond to oral requests, respond orally  
39 or in writing or provide additional information not required by such  
40 subsections. With respect to property that is the subject of a trustee's  
41 sale, the beneficiary of such deed of trust or the holder of any prior lien  
42 may, but shall not be required to, provide information concerning such deed  
43 of trust or any prior lien that is not required by subsection E or F of this  
44 section and may charge a reasonable fee for providing the information. The  
45 providing of such information by any beneficiary or holder of a prior lien

1 shall be without obligation or liability for the accuracy or completeness of  
2 the information.

3 Sec. 5. Section 33-810, Arizona Revised Statutes, is amended to read:

4 33-810. Sale by public auction; postponement of sale

5 A. On the date and at the time and place designated in the notice of  
6 sale, the trustee shall offer to sell the trust property at public auction  
7 for cash to the highest bidder. The trustee may schedule more than one sale  
8 for the same date, time and place. The attorney or agent for the trustee may  
9 conduct the sale and act at such sale as the auctioneer for the trustee. Any  
10 person, including the trustee or beneficiary, may bid at the sale. Only the  
11 beneficiary may make a credit bid in lieu of cash at sale. The trustee shall  
12 require every bidder, except the beneficiary OR THE INCORPORATED CITY OR TOWN  
13 OR THE COUNTY IN WHICH AN OWNER OCCUPIED RESIDENTIAL PROPERTY IS LOCATED, to  
14 provide a ten thousand dollar deposit in any form that is satisfactory to the  
15 trustee as a condition of entering a bid. The trustee or auctioneer may  
16 control the means and manner of the auction. Every bid shall be deemed an  
17 irrevocable offer until the sale is completed, except that a subsequent bid  
18 by the same bidder for a higher amount shall cancel that bidder's lower bid.  
19 To determine the highest price bid, the trustor or beneficiary present at the  
20 sale may recommend the manner in which the known lots, parcels or divisions  
21 of the trust property described in the notice of sale be sold. The trustee  
22 shall conditionally sell the trust property under each recommendation, and,  
23 in addition, shall conditionally sell the trust property as a whole. The  
24 trustee shall determine which conditional sale or sales result in the highest  
25 total price bid for all of the trust property. The trustee shall return  
26 deposits to all but the bidder or bidders whose bid or bids result in the  
27 highest bid price. The sale shall be completed on payment by the purchaser  
28 of the price bid in a form satisfactory to the trustee, EXCEPT THAT A WARRANT  
29 FROM A GOVERNMENT ENTITY THAT IS BIDDING ON THE PROPERTY IS DEEMED TO BE IN  
30 SATISFACTORY FORM. The subsequent execution, delivery and recordation of the  
31 trustee's deed as prescribed by section 33-811 are ministerial acts. If the  
32 trustee's deed is recorded in the county in which the trust property is  
33 located within fifteen business days after the date of the sale, the  
34 trustee's sale is deemed perfected at the appointed date and time of the  
35 trustee's sale. If the highest price bid at a completed sale is less than  
36 the amount of that bidder's deposit, the amount of the deposit in excess of  
37 the bid price shall be refunded by the trustee at the time of delivery of the  
38 trustee's deed.

39 B. The person conducting the sale may postpone or continue the sale  
40 from time to time or change the place of the sale to any other location  
41 authorized pursuant to this chapter by giving notice of the new date, time  
42 and place by public declaration at the time and place last appointed for the  
43 sale. Any new sale date shall be a fixed date within ninety calendar days of  
44 the date of the declaration. After a sale has been postponed or continued,  
45 the trustee, on request, shall make available the date and time of the next

1 scheduled sale and, if the location of the sale has been changed, the new  
 2 location of the sale until the sale has been conducted or canceled and  
 3 providing this information shall be without obligation or liability for the  
 4 accuracy or completeness of the information. No other notice of the  
 5 postponed, continued or relocated sale is required except as provided in  
 6 subsection C of this section.

7 C. A sale shall not be complete if the sale as held is contrary to or  
 8 in violation of any federal statute in effect because of an unknown or  
 9 undisclosed bankruptcy. A sale so held shall be deemed to be continued to a  
 10 date, time and place announced by the trustee at the sale and shall comply  
 11 with subsection B of this section or, if not announced, shall be continued to  
 12 the same place and at the same time twenty-eight days later, unless the  
 13 twenty-eighth day falls on a Saturday or legal holiday, in which event it  
 14 shall be continued to the first business day thereafter. In the event a sale  
 15 is continued because of an unknown or undisclosed bankruptcy, the trustee  
 16 shall notify by registered or certified mail, with postage prepaid, all  
 17 bidders who provide their names, addresses and telephone numbers in writing  
 18 to the party conducting the sale of the continuation of the sale.

19 D. A sale is postponed by operation of law to the next business day at  
 20 the same scheduled time and place if an act of force majeure prevents access  
 21 to the sale location for the conduct of the sale.